

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FASIL TECLE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 2:20-cv-00012-JRC

ORDER GRANTING
UNOPPOSED MOTION FOR
ATTORNEY'S FEES PURSUANT
TO 42 U.S.C. § 406(b)

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13. *See also* Consent to Proceed before a United States Magistrate Judge, Dkt. 2. This matter is before the Court on plaintiff's unopposed motion for attorney's fees pursuant to 42 U.S.C. § 406(b). *See* Dkts. 35, 38. Although defendant does not oppose the fees requested, defendant seeks to clarify that fees previously awarded under § 406(a) are not relevant. *See* Dkt. 38, at 2.

The Court may allow a reasonable fee for an attorney who represented a claimant before the Court and obtained a favorable judgment, as long as the fee is not in excess of twenty-five percent of the total past-due benefits. *See* 42 U.S.C. § 406(b)(1); *Grisbrecht v. Barnhart*, 535

1 U.S. 789 (2002). When a contingency agreement applies, the Court will look first to the
2 agreement and will conduct an independent review to assure the reasonableness of the fee
3 requested, taking into consideration the character of the representation and results achieved. *See*
4 *Grisbrecht*, 535 U.S. at 807–08. Although the fee agreement is the primary means for
5 determining the fee, the Court will adjust the fee downward if substandard representation was
6 provided, if the attorney caused excessive delay, or if a windfall would result from the requested
7 fee. *See Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009) (citing *Grisbrecht*, 535 U.S. at
8 808).

9 Here, the representation was standard, at least, and the results achieved excellent. *See*
10 Dkt. 31; *Grisbrecht*, 535 U.S. at 808. The parties stipulated to a remand in this Court, and on
11 remand plaintiff was awarded benefits. Dkt. 35-2, at 1. There has not been excessive delay, and
12 no windfall will result from the requested fee.

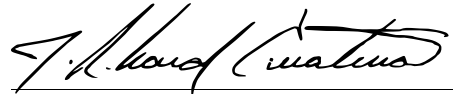
13 Plaintiff’s total back payment was \$184,782.00. Dkt. 35-2, at 5. Plaintiff’s attorneys
14 have previously been awarded (1) \$3,637.17 (EAJA award in plaintiff’s prior case, with a
15 different attorney, that resulted in a remand); (2) \$1,635.98 (EAJA award in plaintiff’s prior case
16 that resulted in a remand); (3) \$2,986.36 (EAJA award in this case); (4) \$6,000 (fee for
17 plaintiff’s attorney’s work before the Administration). *See* Dkt. 38, at 1–2. Plaintiff’s attorney
18 states that awards (2) and (3) were offset in their entireties because plaintiff had outstanding
19 debt. Dkt. 36, at 2. Plaintiff’s attorney seeks an additional \$17,000 in attorney fees. Even if all
20 amounts previously awarded were given to plaintiff’s attorney, the total would be less than 25%
21 of the back pay in this matter.

22 In any event, the Court agrees with defendant that the \$6,000 agency level fee is not
23 relevant. *See Weirick v. Comm’r of Soc. Sec. Admin.*, No. CV-17-03817-PHX-JAT, 2021 WL
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1 5493430, at *1 (D. Ariz. Nov. 23, 2021) (“The 25% caps on attorney fees are at the agency level
2 and the court level respectively; in other words, there is not a 25% cap on aggregate fees
3 awarded under § 406(a) and § 406(b).” (citing *Culbertson v. Berryhill*, 139 S. Ct. 517, 522–24
4 (2019))). The Court declines to take into consideration amounts used to satisfy plaintiff’s debts
5 (see, e.g., *Salinas v. Comm’r of Soc. Sec.*, No. 1:15-CV-00976-EPG, 2022 WL 484905, at *4
6 (E.D. Cal. Feb. 16, 2022)) or amounts paid to plaintiff’s prior attorney. See *Parrish v. Comm’r*
7 *of Soc. Sec. Admin.*, 698 F.3d 1215, 1220 (9th Cir. 2012). Thus, the \$17,000 amount that
8 plaintiff’s attorney seeks is reasonable.

9 Based on plaintiff’s unopposed motion and supporting documents (see Dkts. 35, 38), it is
10 hereby ORDERED that attorney’s fees in the amount of \$17,000 be awarded to plaintiff’s
11 attorney pursuant to 42 U.S.C. § 406(b). If the Social Security Administration is still
12 withholding this amount, it is directed to send this amount to plaintiff’s attorney, Amy
13 Gilbrough, minus any applicable fees ordered by statute. Any past-due benefits withheld by the
14 Commissioner in excess of the amount allowed pursuant to the order may be released to plaintiff;
15 and the Commissioner may make any payment of withheld past-due benefits to the address of
16 plaintiff’s attorney that is registered with SSA.

17 Dated this 4th day of April, 2022.

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19 J. Richard Creatura
20 Chief United States Magistrate Judge
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